

Remarks/Arguments

Claims 1-17, 20, and 23-28 are pending in the application.

It is indicated in the Outstanding Office Action that claims 3, 16, and 17 would be allowable if rewritten in independent to include the features of the base claim and any intervening claims.

This indication of allowable subject matter is noted with appreciation.

In the Office Action mailed January 5, 2007, claims 1, 2, 4 – 8, 10, 12 – 15, 20, and 23 – 28 were rejected under 35 U.S.C 102(b) as being anticipated by U.S. Patent No. 5,615,838 (Eckstein et al). In addition, claims 9 and 11 were rejected under 35 U.S.C 103(a) as being unpatentable over Eckstein et al. in view of U.S. Patent No. 4,226,368 (Hunter).

By this Response, the rejections under 35 U.S.C. 102 and 103 are traversed.

REJECTIONS UNDER 35 U.S.C. 102(b)

The Examiner rejected claims 1, 2, 4 – 8, 10, 12 – 15, 20, and 23 – 28 under 35 U.S.C 102(b) as being anticipated by Eckstein et al.

RESPONSE

Reconsideration and withdrawal of the rejections are requested.

For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131.

By this Response and Amendment, Applicant respectfully traverses the Examiner's rejection since the cited prior art does not disclose, teach or suggest all of the features of independent claims 1, 23, 24, and 25, and thus of claims 2, 4 – 8, 10, 12 – 15, 20, and 26 – 28 dependent therefrom.

Claims 1, 23, 24, and 25

Each of independent Claims 1, 23, 24, and 25 recites, *inter alia*, the following features:

- A.** a pipe connectable to a fluid source via a first end of said pipe and comprising
- B.** a plug emitter having an inlet in fluid communication with said first end,
- C.** a drip outlet in fluid communication with a second end of the pipe away from the emitter, and
- D.** a flow restricting path therebetween,
- E.** said emitter plugging the pipe with respect to any fluid flow except for the flow through said flow-restricting path.”

(Claim 1; claims 23 – 25 similar)

On page 2 of the outstanding Office Action, the Examiner formulated his rejection of the independent claims by stating that:

Eckstein et al. '838 shows a pipe 52 connectable to a pressurized fluid source via a first end of the pipe, the pipe comprising a drip irrigation plug emitter 20 mounted entirely within the pipe, the emitter having an inlet in fluid communication with the first end of the pipe, *a drip outlet 54 in fluid communication with a second end of the pipe away from the emitter*, and a flow restricting path 22 therebetween, *the emitter*

plugging the pipe with respect to any fluid flow except through the flow restricting path 22.

(emphasis added)

The Examiner's rejection of independent Claims 1, 23, 24, 25 is traversed because, among other reasons, Eckstein et al. does not disclose, teach, or suggest features C and E of the independent claims.

In Eckstein et al., the emitter 20 has a sleeve 50 which is typically a portion of an irrigation pipe, and the sleeve has a plurality of openings, such as opening 54 (column 4, lines 40-48). Opening 54 is therefore not in fluid communication with a second end of the pipe away from the emitter, as stated by the Examiner, and therefore feature C of each one of the independent claims of the present application is not disclosed by Eckstein et al.. The Examiner is asked to review FIG 2 of the present application, as discussed in the interview of November 7, 2006, in which *outlet 26 is in fluid communication with the second end of the pipe 28 away from the emitter.*

In addition, Eckstein's emitter is disclosed as having an inner chamber 64 that provides an uninterrupted continuation of the fluid flow inside conduit 52 (column 4, lines 52-58). This disclosure directly contradicts the Examiner's statement that the emitter in Eckstein plugs the pipe with respect to any fluid flow except through the flow restricting path as required in feature E of each one of the independent claims of the present application. Again, the Examiner is asked to review FIGs 2 – 5 of the present application, as discussed in the interview of November 7, 2006, in which *there is no path for fluid flow along the pipe except through the emitter.*

Accordingly, as Eckstein fails to disclose, teach, or suggest all of the features of

independent claims 1, 23, 24, and 25, Applicant submits that Eckstein does not anticipate the presently claimed invention.

Reconsideration and withdrawal of the rejections to claims 1, 23, 24, and 25, and to claims 2, 4 – 8, 10, 12 – 15, 20, and 26 – 28 dependent therefrom, are respectfully requested.

Claims 4, 8, 10, 12, 14, 15, 28

Applicant notes with apprehension that, in the outstanding Office Action, the Examiner has rejected all of the dependent claims, including those listed above, without *in any way* addressing the features recited therein, many of which are independently patentable. See page 2 of the outstanding Office Action, in which the Examiner rejects nineteen separate claims by way of a single paragraph in which *only* the features of *one independent claim* are explicitly addressed.

The Examiner has clearly not met his burden *for each claim* of establishing that each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. Accordingly, Applicant traverses the Examiner's rejections of each dependent claim as anticipated by Eckstein et al.

As non-limiting examples, Applicant notes, with emphases added, that:

- Claim 4 recites that the “plug emitter forms *a swelling at the outer surface of the pipe;*”
- Claim 8 recites that the emitter is “adapted for mounting *inside* an extruded pipe;”
- Claim 10 recites that the “flow labyrinth is symmetric relative to the

direction of flow therethrough *to an extent that the flow inlet may be used as a drip outlet and vice versa;*”

- Claim 12 recites that the “method includes inserting plug emitters at predetermined intervals during the extrusion process so that said pipe is plugged by each emitter with respect to any fluid flow *except for the flow path through the emitter;*”
- Claim 14 recites that “each section has *an end adjacent to the drip outlet* of said emitter;”
- Claim 15 recites “means for fixing said second end of the pipe in suitable position relative to an irrigated plant;” and
- Claim 28 recites that “the plug emitters are inserted *into the pipe* so as to be *surrounded tightly thereby.*”

Applicant submits that none of the above features are found in Eckstein et al. Should the Examiner persist in citing Eckstein et al. as anticipating these claims, the Examiner bears the burden of showing with particularity where each of the above claimed features, and those of the remaining dependent claims, are found in Eckstein et al.

For these additional reasons, as Eckstein fails to disclose, teach, or suggest all of the independently patentable features of dependent claims 4, 8, 10, 12, 14, 15, and 28, Applicant submits that Eckstein does not anticipate the presently claimed invention. Reconsideration and withdrawal of the rejections to these claims are respectfully requested.

REJECTIONS UNDER 35 U.S.C. 103(a)

The Examiner rejected claims 9 and 11 under 35 U.S.C 103(a) as being unpatentable over Eckstein et al. in view of Hunter.

RESPONSE

Reconsideration and withdrawal of the rejections are requested.

To establish a *prima facie* case of obviousness, the Examiner must establish: (1) that some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) that the prior art references teach or suggest all of the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

Applicant submits that all of the features of the presently claimed invention are not disclosed, taught or suggested in the cited prior art.

Hunter is drawn to a sprinkler head for use in a drip irrigation system, in which pressure dropping chambers comprise a plurality of series interconnected vortices disposed within stacked plates. (Hunter, Abstract)

Hunter fails to cure the deficiencies of Eckstein et al., as it does not disclose, teach, or suggest a “drip outlet in fluid communication with a second end of the pipe away from the emitter,” or an emitter “plugging the pipe with respect to any fluid flow except for the flow through said flow-restricting path,” as recited in independent claim 1, from which claims 9 and 11 depend.

Hunter further fails to cure the deficiencies of Eckstein et al., as it does not disclose, teach, or suggest an emitter “adapted for mounting inside an extruded pipe,” as recited in dependent claim 8, from which claims 9 and 11 further depend.

Accordingly, Applicant submits that the combination of Eckstein et al. and Hunter fails to disclose, teach, or suggest all of the features of independent claim 1 and dependent claim 8, and accordingly of claims 9 and 11 dependent therefrom. Thus, that the Examiner has failed to make a *prima facie* case of obviousness.

Claims 9 and 11 are believed to be patentable not only by virtue of their direct or indirect dependency on claim 1 but also for the totality of features recited therein.

ALLOWABLE SUBJECT MATTER

Applicant acknowledges with appreciation the Examiner's indication that claims 3, 16, and 17 would be allowable if rewritten in independent form.

All of the above claims depend directly or indirectly from claim 1, which applicant submits is now in condition for allowance. Accordingly, Applicant requests that the Examiner withdraw all objections to claims 3, 16, and 17.

CONCLUSION

In light of the foregoing, Applicant submits that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In view of Applicant's repeated attempts to clarify the nature of the invention for the Examiner, including the interview conducted by Applicant's representatives on November 7, 2006, Applicant continues to welcome any opportunity to expedite prosecution of the application.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of

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time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

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